February 7, 2006

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Re: ***Old Guard Insurance Company as subrogee of Laurence R. Black and Laurence R. Black v. Kevin R. King***
C.A. No.: 2004-07-012

Submitted: January 19, 2006
Decided: February 7, 2006

FINAL ORDER AND OPINION

Dear Mr. McCullough and Mr. King:

The plaintiff, Old Guard Insurance Company ("plaintiff"), has filed this subrogation action against defendant, Kevin R. King ("defendant"), to recover money damages for a car accident that allegedly occurred on April 7, 2003 between defendant and individual plaintiff Laurence Black's ("Black"). Trial took place on January 19, 2006 and after receipt of the evidence and conclusion of testimony, the Court reserved decision.

THE FACTS

The Court finds the relevant facts as follows. On or about April 7, 2003 at approximately 5:50 a.m., Black was driving northbound on US Rt. 13 at the posted speed

limit of 50 mph. It was dark outside the weather conditions were clear. Black observed defendant's vehicle, a black 1992 Buick Riviera, just north of Memorial Drive, in the middle of the road "on a diagonal." Black testified that there were no hazard lights, headlights, or break lights flashing from the vehicle. Defendant testified that as he was driving northbound on Rt. 13, his car suddenly "stalled out" due to an electrical failure, and that as a result, the vehicle's hazard lights, headlights and break lights, were no longer functioning.

Defendant further testified that he steered his vehicle towards the right shoulder, at which point his car completely ceased moving. Defendant claims that for approximately five to ten minutes, he remained in his car while it sat in the far right lane of Rt. 13 North, pointing diagonally towards the right shoulder. At this angle, the entire passenger side was exposed to oncoming northbound traffic and obstructed the right lane. At trial, defendant insisted that he remained in his vehicle because he believed that any attempt to exit would subject him to potential danger since he observed other vehicles on Rt. 13 at that time, some of which were swerving to avoid colliding with his.

Black only noticed defendant's vehicle when it was approximately three car lengths ahead of his, and slammed on his breaks. Unable to avoid defendant's vehicle, the front of Black's vehicle collided with the exposed passenger side of defendant's vehicle at a speed of approximately 25 mph.[1] Both cars were damaged but neither defendant nor Black sustained physical injuries. On cross-examination, Black admitted being unable to recall if defendant's vehicle was moving or if it was stationary before or

[1] Plaintiff's Exhibit No.: 6 is an "Image Report" generated by Winner Premier Collision Center showing eight photographs of the damage to Black's vehicle.

at the moment of impact, nor could he recall if there were other vehicles traveling on the road at these times.

Both the defendant and Black called the police. Black assisted the defendant move his motor vehicle from the roadway and out of the path of oncoming traffic. Corporal Gregory Simpler ("Corporal Simpler") of New Castle County State Police Troop 2, plaintiff's second witness at trial, arrived at the scene and completed an accident report. Plaintiff's Exhibit No.: 4 is a copy of the report. Based on what defendant and Black recounted to him, Corporal Simpler summarized in writing the accident and concluded in his Police Report that due to a mechanical failure, defendant's vehicle "stopped operating and began to veer into the right lane in front of V-1 [Black's vehicle]. Once V-2 [defendant's vehicle] entered the right lane the driver's side front of V-1 struck the passenger side of V-2." Additionally, Corporal Simpler indicated on the report and testified at trial that both defendant and Black provided him with proof of insurance at the scene. No motor vehicle citations were or have been issued against either defendant or Black. Corporal Simpler did not require either of them to remain at the scene while he completed the accident report.

Although defendant provided insurance information to Corporal Simpler, and testified that at the time of the accident he "believed" that he was insured by American Independent Insurance Company, plaintiff later discovered that defendant was not, in fact, insured at the time of the accident. When asked by defense counsel as to his insurance status, specifically, as to the truth of his statement to Corporal Simpler at the accident scene that he was insured, defendant replied that 'as far as he knew, he was insured at the time of the accident." Defendant also testified that he did not know why his

status appeared as uninsured. Defendant testified at trial that his wife handles their insurance paperwork.

Plaintiff's Exhibit No.: 7, "Recorded Statement Summary", is a summary of a telephone conversation that took place on April 8, 2003, the day after the accident, between defendant and one of plaintiff's insurance agents. According to the "call log", defendant stated that he was "pulling over due to trouble with car – maybe 5 mph – with flashers on" and further, that he "was going slow cuz car was acting funny – I had flashers on – drifint real slow." When asked, "What was your car doing?" defendant answered, "It was stalling a bit so I was pulling over to the right." On three more occasions, the call log reflects that defendant indicated that all of the lights in his car were working at the time of the collision. At trial, defendant testified that his statements to the agent were made in an attempt explain the events leading up to the collision, and that they should not be misconstrued to imply that defendant's vehicle was moving at the time of the collision.

Plaintiff's third witness, Dean Crowley ("Crowley"), a supervisor at Westfield Insurance Company, testified at trial that five years ago plaintiff's insurance company, Old Guard, was purchased by Westfield. Crowley testified that according to their records, a collision loss payment was paid by Westfield on behalf of Black in the amount of $3,495.93[2], less Black's deductible of $250.00, but adding to that the cost of a rental

[2] Plaintiff's Exhibit No.: 2 is a "Repair Authorization & Direction of Pay" generated by Winner Automotive Group, Winner Premier Collision Center, Inc., showing the total amount for repairs to Black's vehicle as $3,245.93.

car for Black for $240.00, which Westfield paid to Enterprise Rent-A-Car[3] on behalf of Black.

Plaintiff asserts in its Civil Complaint that defendant was negligent in causing the accident in failing to maintain a proper lookout; failing to maintain proper control of the vehicle; driving a vehicle in a careless and imprudent manner without due regard for the road and traffic conditions then in existence in violation of 21 Del. C. § 4176(a). For the damage to Black's vehicle, plaintiff's complaint demands judgment in the amount of $3,735.93, which includes Black's $250.00 deductible, with pre- and post-judgment interest at the legal rate and costs for this action.

Plaintiff further asserts in the Complaint that defendant violated 21 Del. C. § 4176(b) for failing to give full time and attention to the operation of the vehicle. At trial, counsel for plaintiff additionally claimed that defendant violated 21 Del. C. § 4122 for an improper lane change as well as 21 Del. C. § 2118 for operating a vehicle without being properly insured. During plaintiff's closing argument, counsel noted that defendant breached his duty owed to Black and other drivers on the roadway by remaining in his vehicle for five to ten minutes and failing to make an attempt to flag down, signal, or notify other drivers that his car was obstructing the right lane of Rt. 13 north.

In response, Defendant argues that the accident was not due to his negligence. Defendant claims that out of fear of being injured, he remained in his vehicle because other cars traveling towards his would be unable to see him if he attempted to exit the vehicle and flag them down or signal to them since it was dark outside. Defendant

[3] Plaintiff's Exhibit No.: 3 is a "Rental Invoice" generated by Enterprise Rent-A-Car to Westfield, which reflects that this amount was paid by Westfield on behalf of Black.

further argues that since Corporal Simpler issued no citations against him, this serves as evidence to support a finding that the collision was not a result of his own negligence.

THE LAW

Plaintiff has the burden of proving its claims by a preponderance of the evidence. A preponderance of the evidence is defined as, "[T]he side on which the greater weight of evidence is found." *Bishop v. Trexler*, UIAP Appeal Docket No. 430087 (Mar. 31, 2004), at 2, rev'g Decision of Appeals Referee (Feb. 24, 2004), (quoting *Taylor v. State*, 2000 WL 313501, at *2 (Del.Supr.2000)). Additionally, to prevail in a negligence action, "…a plaintiff must show, by a preponderance of the evidence, that a defendant's negligent act or omission breached a duty of care owed to plaintiff in a way that proximately caused the plaintiff's injury." *Duphill v. Delaware Electric Cooperative, Inc.,* 662 A.2d 821, 828 (Del.Supr.1995); quoting *Culver v. Bennett,* 588 A.2d 1094, 1096-97 (Del.Supr.1991).

DISCUSSION

The Delaware Supreme Court has followed the 'sudden emergency doctrine' in certain cases of negligence. In *Dadds v. Pennsylvania Railroad Company*, on appeal from summary judgment in favor of the railroad company and against the motorist, the Supreme Court of Delaware reversed the Superior Court's grant of the railroad company's motion for summary judgment and remanded the case for trial, stating that the trial court should have considered and applied the 'sudden emergency doctrine.' 251 A.2d 559, 560. (Del.Supr.1969). The sitting judges were the Honorable Chief Justice Wolcott, along with Justices Carey and Hermann, Justice Hermann writing for the Court.

The sudden emergency doctrine is appropriate where a person is confronted with a "sudden emergency" that is not due to his own negligence. A person faced with such circumstances will not be held to the same standard of "care and prudence" as a person who had "time for thought and reflection." *Id.* at 561. Furthermore, even if a person so situated, in his excitement, does not make "the wisest choice," he will not be held guilty of negligence "if he makes such choice as a person of ordinary prudence placed in such a position might make." *Id*. This doctrine is not an exception to the general "reasonably prudent person" standard, but the finder of fact must merely consider such an emergency in its determination as to "whether the course of action" taken by a defendant was one that an "ordinary prudent person would have followed." *Id*., citing *Panaro v. Cullen*, 185 A.2d 889 (Del.Supr.1962); *Alabama Gr. S.R. Co. v. Molette*, 207 Ala. 624 (Ala.Supr.1922); Prosser on Torts (3d. Ed.) pp. 171-173; 8 Am.Jur.(2d) 'Automobiles and highway Traffic', s 1016.

Defendant further argues that since no citations have been issued against him, this serves as evidence to support a finding that he was not negligent. The violation of a Delaware statute enacted for the safety of others is evidence of negligence per se. *Duphill v. Delaware Electric Cooperative, Inc.,* 662 A.2d 821, 828 (Del.Supr.1995); quoting *Culver v. Bennett,* 588 A.2d 1094, 1096-97 (Del.Supr.1991). Further, a finding of negligence by the defendant, standing alone, will not sustain an action for damages unless it is also shown to be the proximate cause of plaintiff's injury. *Duphill*, 828. "In Delaware, a proximate cause is one 'which in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.'" *Id*. at 829.

According to *Duphill*, plaintiff must show, by a preponderance of the evidence, that defendant breached the duty of care that he owed to plaintiff of a reasonably prudent driver under the circumstances. The Court finds that plaintiff has shown at trial, by a preponderance of the evidence that defendant breached his duty of care of a reasonably prudent driver under the circumstances, which he owed to Black as well as other drivers on the roadway. The Court also concludes that defendant's breach of said duty legally and proximately caused Black's vehicle to collide with plaintiff's motor vehicle. If defendant, indeed, was waiting inside of his vehicle while obstructing a lane of traffic for five to ten minutes, this Court cannot reconcile why plaintiff would remain in the direct line of traffic since it was reasonably foreseeable that a car, such as Black's, would not be able to see defendant's black colored car with no functioning lights at that time of the day.

The Court finds therefore, that defendant breached his duty owed to Black and other drivers on the roadway by remaining in the direct line of traffic and making no attempt to signal other drivers of his dangerous situation. Plaintiff has therefore shown at trial that by a preponderance of the evidence, defendant's breach legally and proximately caused the collision.[4,5]

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[4] After considering the standard outlined by the Supreme Court of Delaware in *Dadds*, this Court feels that the 'sudden emergency doctrine' is inapplicable to the facts of this case. Defendant claims that his car was exposed to oncoming traffic in the right lane of Rt. 13 while it was still dark outside for five to ten minutes. A reasonably prudent driver under these circumstances would have used this time to attempt to signal other drivers of the dangerous situation or remove the vehicle from the path of oncoming traffic.

[5] In *Dadds*, the motorist's vehicle stalled out while she attempted to drive through a railroad crossing. She approached the crossing, and while stopping to check for a train, she suddenly noticed that one was, indeed, fast-approaching. In a hurried and excited state, she attempted to start her car, and "as she lifted her foot from the break to start the motor, the car drifted onto the tracks." *Id.* at 560. After one more unsuccessful attempt, she jumped out of the standing vehicle, and the train crashed into her automobile. *Id*. The Railroad Company sued for damage to the train and the motorist counterclaimed for destruction to her car. *Id*. The

When comparing the facts of *Dadds* to the instant case, this Court cannot conclude that the sudden emergency doctrine applies to the type of circumstances that defendant faced, because five to ten minutes is far different from an emergency that is "sudden" whereby a person, such as Miss Dadds, has an extremely limited and small amount of time between an emergency situation and an unfortunate result, making it extraordinarily difficult to exercise the care of a reasonably prudent driver. Furthermore, defendant gave conflicting accounts of the events leading up to the accident, as well as the condition of his car. At trial, defendant testified that none of the electrical functions of his car were operating after it stalled out, and that he was unable to use his hazard lights, headlights, or break lights. However, the conversation log that was recorded the day after the accident, Plaintiff's Exhibit No.: 7, indicates that defendant stated on *five separate occasions* that his "flashers" or "lights" were on.

At trial, defendant further testified that his car was stopped at the time of the accident. However, defendant's statements in the call log quote him as indicating that his car was moving at the time of the accident. In addition, the police report indicates that defendant's vehicle was moving immediately prior to the collision. Since the conversation log was taken only one day after the accident, and since it corroborates with the police report taken minutes following the accident, defendant's bare statement at trial that his car was not moving is unpersuasive for this Court to conclude that plaintiff has not met its burden of proof. The evidence presented by plaintiff is sufficient to show, that

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Railroad Company argued that the sudden emergency doctrine was not applicable because the motorist was negligent, however the Supreme Court ruled that such a position was "untenable" because "under Miss Dadds' version of the circumstances, the sudden emergency was caused by the stalling of the motor, an occurrence not traceable to any negligence on her part. The evidence is that she had no such motor trouble previously." *Id* at 561.

by a preponderance of the evidence, even considering Black's testimony that he could not recall if defendant's car was moving, defendant was negligent.

In response to defendant's final argument, that his lack of negligence is evidenced by the fact that no traffic citations were issued against him, the Court notes that even if Corporal Simpler had issued any citations against defendant, under *Duphill,* defendant cannot be held liable to the plaintiff unless the plaintiff can show, by a preponderance of the evidence, that defendant's breach was the legal and proximate cause of the damage to Black's vehicle. 662 A.2d 821, 828 (Del.Supr.1995).

As already outlined above, plaintiff has shown, by a preponderance of the evidence, that defendant's conduct of remaining in his car and failing to attempt to signal other drivers of his dangerous situation falls below the standard of care of a reasonably prudent driver under the circumstances. As such, defendant's breach of his duty was the legal and proximate cause of the damage to Black's vehicle.

Therefore, this Court finds in favor of plaintiff Old Guard Insurance Company and enters judgment against defendant in the amount of $3,735.93 plus pre and post judgment interest. This sum includes Laurence R. Black's $250.00. Each party shall bear their own costs.

IT IS SO ORDERED this 7th day of February 2006.

John K. Welch
Judge

/jb
cc: Rebecca Dutton, Case Processor
CCP, Civil Division